

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

| | | |
|---------------------------|---|----------------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiffs, |) | 4:06CR3016 |
| |) | |
| v. |) | |
| |) | |
| ARMANDO GARCIA-DELACRUZ, |) | TENTATIVE FINDINGS ON OBJECTIONS |
| |) | TO PRESENTENCE INVESTIGATION |
| Defendants. |) | REPORT |
| |) | |

Objections have been made by the defendant to paragraphs 35, 38, 42, and 45 of the Presentence Investigation Report.

As to paragraph 35, it appears that the 2006 Guidelines Manual is appropriate. The objection is overruled.

Paragraphs 38, 42, and 45 relate to the determination of the base, adjusted, and total offense levels. I tentatively conclude that the offense levels may be greater than 32, if the evidence at the trial warrants a level above 32. The finding by the jury was that the defendant is responsible for “500 grams or more” of methamphetamine. The applicable statute, 21 U.S.C. § 841(b) requires that a violation involving “500 grams or more” shall render the person to be sentenced to a term of imprisonment which “may not be less than 10 years or more than life” The Sentencing Guidelines, which are advisory only, do not prevent a judge from sentencing a defendant to a term of imprisonment within the life of the defendant, if the sentence is reasonable. The objection is overruled.

The amount of methamphetamine for which the defendant is responsible has not been finally determined. I am now reviewing my notes of the trial evidence, as well as a draft of the transcript of the trial. Argument by counsel will be welcomed, of course, on the issue of the quantity of methamphetamine that is the responsibility of the defendant, as well as what the sentence should be. I do not expect to use reports of Antonio Murillo-Vasquez or Louise Conover, but am willing to hear and consider arguments of counsel on that subject.

Other than the matters mentioned herein, I tentatively find that the Presentence

Investigation Report is true and accurate. Objections to these tentative findings may be made at the time of the sentencing.

Dated May 2, 2007.

BY THE COURT

s/ Warren K. Urbom
United States Senior District Judge